

# Department of State

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TELEGRAM

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PAGE 01 BUENOS 84054 021307Z  
ACTION ARA-16

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INFO OCT-01 ADS-00 INR-10 CIAE-00 ICA-11 DODE-00 H-01  
NSAE-00 SY-05 HA-06 L-03 INSE-00 PA-01 DCT-02  
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R 011505Z JUN 81  
FM AMEMBASSY BUENOS AIRES  
TO SECSTATE WASHDC 9729

BUENOS AIRES 4054

E.D. 12065: GDS 5/29/87 (FRIEDMAN, T.B.) OR-P  
TAGS: SHUM, AR  
SUBJECT: COURT ORDERS PEN PRISONER'S LIBERATION

1. (U) SUMMARY: IN A VERY SIGNIFICANT DECISION, THE ARGENTINE SUPREME COURT HAS REVIEWED THE CASE OF A LONG-TIME PEN PRISONER AND ORDERED THE GOVERNMENT TO EITHER FREE HIM UNDER SUPERVISED LIBERTY OR ALLOW HIM TO USE THE RIGHT-OF-OPTION TO LEAVE THE COUNTRY. PEN PRISONERS, WHO HITHERTO HAVE ESSENTIALLY BEEN THE PROVINCE OF THE MILITARY, MAY NOW COME UNDER EFFECTIVE JUDICIAL REVIEW. AFTER INITIAL RESERVATIONS, THE MILITARY SEEMS TO BE READY TO ACCEPT THIS COURT ORDER. END SUMMARY.

2. (U) IN A CLEAR DEPARTURE FROM THE PAST, IN A FOUR-TO-ONE VOTE OF ITS MEMBERS, THE ARGENTINE SUPREME COURT HAS ORDERED THE GOVERNMENT TO EITHER GRANT THE RIGHT OF OPTION TO A DETAINEE OR TO FREE HIM UNDER SUPERVISED LIBERTY. THE INDIVIDUAL IN THE CASE, BENITO ALBERTO MOYA, HAS BEEN A MEMBER OF THE "PREX AND PROPAGANDA FRONT" OF A TERRORIST ORGANIZATION. IN 1979, A COURT FOUND THE EVIDENCE OF THIS CHARGE INSUFFICIENT AND ORDERED HIM FREED. THE SUPREME COURT'S MAY 26 DECISION HAS GIVEN THE GOVERNMENT UNTIL JUNE 16 TO EITHER OPTION MOYA OR PAROLE HIM.

3. (U) IN ITS OPINION, THE SUPREME COURT'S MAJORITY ASSERTED SEVERAL NOTEWORTHY PRINCIPLES:  
A) IT RECOGNIZES THE AUTHORITY OF THE GOVERNMENT TO HOLD PRISONERS UNDER PEN;  
B) HOWEVER, IT SAYS THAT AUTHORITY IS SUBJECT TO JUDICIAL REVIEW;  
C) IT ASSERTS THAT THE GOVERNMENT'S RIGHT TO HOLD AN INDIVIDUAL IN PROLONGED DETENTION UNDER PEN MUST MEET A STANDARD OF REASONABLENESS, MEASURED BY THE DANGER THE PEN PRISONER, IF RELEASED, POSES TO SOCIETY;  
D) THIS STANDARD OF REASONABLENESS, IT MAKES CLEAR, SHOULD BE APPLIED ON A CASE-BY-CASE BASIS. THUS, THE MOYA CASE IS NOT A GENERALIZED PRECEDENT FOR ALL PEN PRISONERS. THE DISSENTING JUDGE ARGUED, IN ESSENCE, THAT THE COURTS UNDER STATE-OF-SEIGE PROVISIONS MUST ACCEPT THE GOVERNMENT'S JUDGEMENT ON WHETHER OR NOT A PRISONER CAN BE RELEASED.

4. COMMENT. THE COURT HAS APPARENTLY SCORED A REAL BREAKTHROUGH, SUBJECTING A PEN PRISONER TO GENUINE JUDICIAL REVIEW. THE THE GOVERNMENT GOES ALONG, AS SEEMS LIKELY, THE COUNTRY WILL HAVE TAKEN A VERY SIGNIFICANT STEP TOWARDS THE RULE OF LAW.

5. WHILE, AS NOTED, THE COURT WAS AT PAINS TO MAKE CLEAR THAT THE MOYA DECISION WAS NOT A GENERALIZED PRECEDENT, IT WILL AFFECT AT LEAST SOME OF THE ABOUT 600-650 PRISONERS WHO ARE NOW BEING HELD UNDER PEN WITHOUT TRIAL OR SENTENCING. THOSE, AND THERE ARE AT LEAST A HANDFUL, IN THE SAME CIRCUMSTANCES AS MOYA (TRIED AND FOUND INNOCENT) ARE THE MOST DIRECT BENE-

FICIARIES OF THIS DECISION. OTHERS AMONG THE 600-650 ARE THOSE WHO HAVING SERVED THEIR SENTENCES WERE NEVER RELEASED, REMAINING UNDER CUSTODY OF PEN, AND THOSE WHO HAVE NEVER EVEN BEEN BROUGHT TO TRIAL. BEFORE THE MOYA DECISION ALL OF THESE CASES WERE, EFFECTIVELY, BEYOND JUDICIAL REVIEW. NOT IT APPEARS THE COURT WILL BE LOOKING AT EACH ONE OF THEM. IN ITS EXAMINATION THE COURT WILL TOUCH ON THE SOME 400 CASES WHICH THE GOVERNMENT FEELS ARE TOO DANGEROUS TO RELEASE, UNDER ANY CIRCUMSTANCES. WE DOUBT THAT THE GOVERNMENT WOULD RELEASE THESE "HARD-CORE CASES," EVEN IF THE COURT SO ORDERED.

6. THE SUPREME COURT HANDLED THIS DECISION, WHICH MIGHT HAVE CREATED A SEVERE CRISIS OF AUTHORITY BETWEEN IT AND THE EXECUTIVE, WITH CONSIDERABLE SKILL. THROUGH PRESS LEANS BEGINNING TEN DAYS AGO, IT ARTFULLY LAID THE GROUNDWORK BOTH WITH THE GOVERNMENT AND THE MILITARY FOR THE ACCEPTANCE OF ITS ORDER. THOUGH THERE WERE SOME FAIRLY SERIOUS TENSIONS, IT NOW APPEARS THAT THE GOVERNMENT WILL ACCEPT THE ORDER -- PROBABLY BY GRANTING MOYA SUPERVISED LIBERTY.

7. ACTUALLY, IT IS NOT THE GOVERNMENT THAT MAKES DECISIONS ON PEN PRISONERS BUT THE MILITARY, SITTING IN A COMMITTEE THAT REVIEWS REQUESTS FOR OPTION AND SUPERVISED LIBERTY. THE GOVERNMENT, IN THE PERSON OF THE MINISTER OF THE INTERIOR, PRESIDES OVER THE COMMITTEE BUT ONLY THE THREE SERVICES HAVE A VOTE. MOYA APART, WE UNDERSTAND THAT THE NEXT MEETING OF THAT COMMITTEE WILL TAKE PLACE IN MID-JUNE. AMONG THE CASES THAT WILL BE RESOLVED ARE A NUMBER IN WHICH THERE HAVE BEEN A HIGH DEGREE OF US CONGRESSIONAL INTEREST, WE ARE TOLD.

8. [ ]

RUSER

B3(A)

ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

( ) Release (X) Excise ( ) Deny

Exemption(s): B3(A)

Declassify: ( ) In Part (X) In Full

( ) Classify as ( ) Extend as ( ) Downgrade to

Date Declassify on Reason

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